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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CECCHI GORI PICTURES, a California corporation; CECCHI GORI USA, INC., a California corporation, Debtors,	Bank. Case No.: 16-53499 (Jointly Administered with Case No. 16-53500) Chapter 11
CECCHI GORI PICTURES and CECCHI GORI USA, INC., Plaintiffs, v. G&G PRODUCTIONS, LLC, a California limited liability company, GABRIELE ISRAILOVICI, an individual, GIOVANNI NAPPI, an individual, VITTORIO CECCHI GORI, an individual, and DOES 1-10 Defendants.	Adv. Case No. 17-05007 **OPPOSITION TO COURT'S ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE ISSUED; MEMORANDUM OF POINTS AND AUTHORITIES** [*Declarations in Support and Evidentiary Objections Concurrently Filed]* Date: March 6, 2017 Time: 11:00 a.m. Place: United States Bankruptcy Court Courtroom 3020 280 South First Street San Jose, California 95113-3099 Judge: Honorable M. Elaine Hammond

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Defendant, G&G Productions, LLC ("**G&G**"), through its counsel, and Defendants Gabriele Israilovici ("**Israilovici**") and Giovanni Nappi ("**Nappi**") specially appearing through counsel, (collectively, the "**Defendants**"), respectfully submit their Opposition (the "**Opposition**") to the Court's Order to Show Cause Why Preliminary Injunction Should Not Be Issued, entered on February 1, 2017 [Docket No. 15] (the "OSC"); and Debtor's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Issued, filed by Plaintiffs Cecchi Gori USA, Inc. ("**CGUSA**") and Cecchi Gori Pictures ("**CG Pictures**", together with CGUSA, the "**CG Companies**", "Plaintiffs" or "Debtors") on February 1, 2017 (the "**TRO Motion**").

Reference is also made to the *Ex Parte* Application For Right to Attach Order and Order For Issuance of Writ of Attachment Against Defendants G&G Productions LLC and Gabriele Israilovici, filed by Plaintiffs on February 1, 2017 [Docket No. 7] (the "**Attachment Motion**"), and Defendants' Motion to Quash Issuance of Writ of Attachment Against Defendants G&G Productions LLC and Gabriele Israilovici, (the "**Motion to Quash**") concurrently filed herewith, and incorporated by reference hereto.

This Opposition is based on the attached Memorandum of Points and Authorities; the argument and evidence contained in the Motion to Quash, the following declarations with attached exhibits filed concurrently herewith: the Declarations of Gabriele Israilovici ("**Israilovici Decl**."), Brian L. Berlandi, Esq. ("**Berlandi Decl**."); David J. Lederer, Esq. ("**Lederer Decl**."), Filippo Puglisi-Alibrandi ("**Alibrandi Decl**."), and of Scott Weingust ("**Weingust Decl**."); the Evidentiary Objections to the Declaration of Niels Juul ("**Juul Evidentiary Objections**") and the Evidentiary Objections to the Declaration of Ori Katz in support of the TRO Motion and Attachment Motion ("**Katz Evidentiary Objections**") filed concurrently herewith, the record and pleadings in this adversary proceeding and the underlying chapter 11 bankruptcy case, and any oral or documentary evidence presented at or prior to the time of any hearing on the OSC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs make very serious allegations against Defendants and seek extraordinary relief based on, admittedly, very little information. After years of delay the Nous liquidators have suddenly stepped into the shoes of Debtors. While Debtors' counsel and Mr. De Camara may have worked diligently to seek information from any source available, this search has led them to the one party with the least credibility in relation to the CG Companies—disgruntled former CEO and ex-Executive Producer, Niels Juul ("**Juul**"). As will be observed from this Opposition, the impetus behind Debtors' bankruptcy filings and this lawsuit derives from *Juul's effort* to reinstate what he believes is his due, both in terms of finances and in terms of his Hollywood name.

II. BACKGROUND—NIELS JUUL, THE SELF-SERVING CEO

Plaintiffs depict Juul as the innocent "Hollywood Insider" who was left in the dark about matters of the Debtors and bullied by the henchmen of a sort of Italian crime boss, Cecchi Gori. Though this story makes for an interesting movie script, Juul is well aware that—much like any Hollywood drama—the script strays far from the truth.

A. In 2009 Israilovici Introduces Juul to Cecchi Gori

Juul was hired in 2009 by Cecchi Gori to completely run the CG Companies. A fallout in 2008 with Gianni Nunnari ("**Nunnari**") the former CEO of the Debtors, resulted in litigation between Nunnari and Cecchi Gori (the "**Nunnari Litigation**"). The contentious Nunnari Litigation proceeded for the three years and after nearly a one-month trial, the court entered judgment against Nunnari in the amount of $13,786,465. This left no one at the helm of the Debtors, and Cecchi Gori turned to his friend and successful businessman Israilovici for both financial and managerial assistance. Prior to this time, although Israilovici knew Cecchi Gori, he had no business dealings with him. Israilovici Decl. ¶ 3. Since Israilovici was unable to personally spend the time required for fulltime management of the CG Companies, he contacted Juul for assistance. Israilovici knew Juul through previous business dealings when Israilovici operated franchise stores in Rome and Milan of the Von Dutch company where Juul was the CEO. Israilovici knew Juul lived in Los Angeles and was not working at the time and Juul was

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fluent in both English and Italian, which Israilovici thought would be helpful to Cecchi Gori, especially in dealing with the Nunnari Litigation. Israilovici therefore introduced Juul to Cecchi Gori, and the parties negotiated a business arrangement for Juul's management of the CG Companies. Israilovici Decl. ¶ 4 to ¶ 8.

Juul was employed under the terms of a consultant agreement (the "**Juul 2009 Consultant Agreement**") to serve as the CG Companies' temporary CEO, CFO and Secretary. *See* Israilovici Decl.¶ 8, Exhibit 1. In addition to compensation, Juul was also entitled to reimbursement of expenses, provided that any charges over $1,000 had to be approved in advance. Juul also was further entitled to a commission of 10% for any film projects initiated or secured during his employment, and to a commission of 6.66% of all proceeds recovered in the Nunnari Litigation. Juul 2009 Consultant Agreement, § 2.

Because of Cecchi Gori's limited command of the English language and seldom travel to the United States, Cecchi Gori asked Israilovici to serve in the official capacity of a liaison between the CG Companies and Cecchi Gori. Therefore, Israilovici and the CG Companies—through Juul, as CEO—entered into a Consulting Agreement. Israilovici Decl. ¶10, and Exhibit 2 thereto ("**Israilovici Consulting Agreement**").

It was not clear in July of 2009 how much time would be needed from Israilovici, and Israilovici understood that the assets of the CG Companies had been tied up in the Nunnari Litigation. Therefore, Cecchi Gori and Israilovici agreed to a compensation structure whereby Israilovici would be reimbursed by the CG Companies for all out of pocket expenses, but the amount of any compensation would be subject to subsequent negotiation with, and payment by, Cecchi Gori personally, depending on the amount of time Israilovici ultimately spent performing duties under the Israilovici Consulting Agreement. Israilovici Decl. ¶ 11. To date, the Israilovici Consulting Agreement has not been terminated or amended.

B. 2012 Juul Removal As CEO

In late 2012, soon after Juul was paid in the settlement of the Nunnari Litigation (as discussed below), Cecchi Gori and Israilovici started to become concerned about Juul's running of the CG Companies. When Israilovici requested bank accounts, financial statements, and other

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materials relating to the CG Companies from Juul, Juul would consistently not provide them. Israilovici Decl. ¶ 20. Also, it came to Israilovici's attention that Juul was incurring significant "expenses" despite the Juul 2009 Consultant Agreement specifically providing that any expense over $1,000 had to be approved in advance. *See* Juul 2009 Consultant Agreement, § 2(B). It seemed to Israilovici that Juul was acting like he was a "big shot Hollywood producer" and no longer had to get approval for what he was doing with the CG Companies. Israilovici Decl. ¶ 20.

Based on the frustrations with Juul, in late 2012, Cecchi Gori removed Juul as an officer of the CG Companies. Israilovici Decl. ¶ 21. An alternative arrangement was agreed to. On or around December 15, 2012, Cecchi Gori and Juul signed an Executive Producer Agreement ("**2012 EP Agreement**") with a term of December 15, 2012 through December 15, 2015. A copy of the 2012 EP Agreement is attached to the Israilovici Decl. as Exhibit 5. Under the 2012 EP Agreement, Juul, and his company, Nofatego LLC ("Nofatego")[1] would act as an executive producer on any of the CG Companies' projects, and Juul was to "pursue opportunities for the production, co-production and/or development" of certain titles, including *Ferrari*, but that the CG Companies "unilaterally reserve the right to reject any proposals secured through [Juul's] efforts" and that the CG Companies have "the ultimate approval on all material terms. Such approval must be secured in writing by the CG Entities, prior to the execution of any agreement." 2012 EP Agreement at pg.1 (emphasis added). The 2012 EP Agreement further provides that: (i) for all projects developed on the titles included within the 2012 EP Agreement, Juul would be entitled to receive an executive producer credit; and (ii) that "if there are any costs, such as travel, consulting services or administrative costs, [Juul] need to secure prior approval of such costs by CG Entities…" (emphasis added). Israilovici Decl. ¶ 21, 2012 EP Agreement at pg.2.

Since Israilovici was not an officer of the CG Companies, a separate consultancy agreement was entered into between Israilovici and Nofatego on December 15, 2012 (the "**Consultancy Agreement**") for the primary purpose to make sure that Juul would keep Israilovici informed of all his efforts on projects. Israilovici Decl. ¶ 24. The Consultancy Agreement requires Juul to (a) "share all relevant information with regards to its work relating to the projects and will keep [Israilovici] informed on any material progress on any particular

[1] Pronounced as "No-Fat-Ego."

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project" and (b) "present on a monthly basis as status report of the negotiations relating to "the titles" and will provide copies of any agreements entered into" by Juul on behalf of the CG Companies. Israilovici Decl. ¶ 24, Exhibit 6 . Unfortunately, Juul was not removed as the signatory on all the bank accounts; an oversight that Israilovici and Cecchi Gori learned later was very costly. Israilovici Decl. ¶ 25.

Despite Juul's new limited role as simply an executive producer under the 2012 EP Agreement, Juul still continued to manage the CG Companies in the same manner as he had while serving as CEO. Israilovici Decl. ¶ 26. Juul maintained control over the bank accounts and continued to make the day-to-day decisions of the CG Companies. Cecchi Gori and Israilovici remained concerned over Juul's operation of the CG Companies. Israilovici Decl. ¶ 27. Juul was supposed to keep Israilovici informed under the Consultancy Agreement, but he did not properly do so. Israilovici Decl. ¶ 27.

C. Discoveries of Juul's Unauthorized Transactions

In December of 2014, Israilovici traveled to Los Angeles to investigate the operations of the CG Companies, and while in Los Angeles he was surprised to learn that $25,000 was needed to extend the option rights of the book on the *Ferrari* project. Israilovici Decl. ¶ 28. Faced with either losing the rights to the project or paying to extend the option, on or about December 10, 2014, Israilovici caused G&G to pay the $25,000 directly to the author to extend the option rights for the *Ferrari* project. Israilovici Decl. ¶ 28.

Also in December of 2014, Juul provided Israilovici financial statements of the CG Companies through November 30, 2014. The figures appeared grossly inflated to Israilovici and Juul had no clear explanation. Israilovici Decl. ¶ 29. Also, Juul was conducting business out of a new office in Paramount Studios—which had not been previously approved by Cecchi Gori, as required. Israilovici Decl. ¶ 29.

In early 2015, after visiting Los Angeles, Israilovici began to investigate further into the affairs of the CG Companies and learned that Juul had previously entered into an Agreement effective in June 2014 (the "Mann Agreement") with renowned producer and director, Michael Mann ("Mann") for the *Ferrari* project. A copy of the Mann Agreement is attached to the Israilovici Decl. as Exhibit 7. Juul had not informed Israilovici of the Mann Agreement when he

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visited Los Angeles in December of 2014, and Juul did not obtain prior approval from Cecchi Gori—which was in direct violation of the 2012 EP Agreement. Israilovici Decl. ¶ 30. In further violation of the 2012 EP Agreement, the Mann Agreement provided for Juul to receive a "producer" credit for the project, rather than the less valuable "executive producer" credit, which the 2012 EP Agreement allows. Israilovici Decl. ¶ 30; *See also* 2012 EP Agreement at pg.2.

Upon learning of the Mann Agreement, on or about April 28, 2015, Cecchi Gori sent a letter to Juul expressing concern over the mounting expenses and further indicating that Juul was not authorized under the 2012 EP Agreement to enter into the Mann Agreement. A translated version of the April 28, 2015 letter is attached to the Israilovici Decl. as Exhibit 8.

Cecchi Gori's relationship with Juul continued to worsen. On April 24, 2015, Juul wrote an email to Cecchi Gori in which Juul, for the first time, asked for approval of expenses and that he wanted a producer credit on the *Ferrari* project, even though his 2012 EP Agreement allowed him to get only an executive producer credit. A copy of this email is attached as Exhibit 11 to the Israilovici Decl. Cecchi Gori was very upset by this and he sent a reply email on April 28, 2015 complaining that Juul had not before requested prior approval on expenses and that he had entered into the Mann Agreement regarding *Ferrari* without prior approval. *See* Exhibit 8 of the Israilovici Decl.

On or about May 4, 2015, the CG Companies finally fired Juul for taking actions without company approval, such as entering into the Mann Agreement. Juul still refused to turn over control of the bank accounts and the books and records of the CG Companies despite repeated requests. Juul also continued to carry on as though he represented the CG Companies. Attached as Exhibit 12 to the Israilovici Decl. are another set of emails between Juul, Cecchi Gori and Israilovici, in which Cecchi Gori again instructed Juul "once and for all you must stop anything you are doing in the names of the companies…" Israilovici Decl. ¶ 37, Exhibit 12[2].

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[2] Juul attaches as Exhibit A in his Declaration in Support of Debtors Ex Parte Application to For Temporary Restraining Order and Ex Parte Application to For Right to Attach Order ("**Juul Declaration**"), a copy of an email from Cecchi Gori dated May 2015 as support for the argument that Israilovici had the trust of Cecchi Gori. Juul however does not give the Court the full context of those conversations (contained in the above identified emails) which focused on Juul's actions in violation of his 2012 EP Agreement.

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On October 15, 2015, Cecchi Gori sent a letter to Juul once again demanding turnover of the CG Companies' books and records. Israilovici Decl. ¶ 38, as Exhibit 13. Juul was holding the CG Companies' records in his own storage facilities outside of Los Angeles in order to prevent recovery of them. Israilovici Decl. ¶ 38.

In or around October of 2015, Israilovici traveled again to Los Angeles in an effort to obtain control of the accounts and books and records of the CG Companies. While there, Israilovici learned through communications with Jay S. Brewer, the CG Companies' accountant, that the CG Companies had a bank account at City National Bank over which Juul retained control. Juul had made a series of transfers to himself and Nofatego without permission. Israilovici Decl. ¶ 39.

After the discovery of the bank account, Israilovici and Cecchi Gori decided to hire a professional to investigate. On December 7, 2015, Israilovici, at the request of Cecchi Gori and on behalf of the CG Companies, engaged the services of the accounting firm KPMG to conduct an audit of the CG Companies bank records. Israilovici Decl. ¶ 40. On February 29, 2016, KPMG completed the audit and provided a report, a true and correct copy of which is attached to the Declaration of Filippo Puglisi-Alibrandi as Exhibit 1. (the "KPMG Report"). The report concluded that during the period of January 1, 2012 to December 31, 2015, no less than $1,335,264 was transferred from the CG Companies directly to or for the benefit of Juul and/or Nofatego. None of this was authorized by Cecchi Gori. Israilovici Decl. ¶ 41.

It was not until mid-2016 that Juul finally turned over the over the records of the CG Companies to a storage facility in Manhattan Beach, CA leased for the benefit of the CG Companies by the Blakely Law Group, the law firm that represented Cecchi Gori in the litigation entitled *Nous S.r.l., et al. v. Cecchi Gori Pictures, et al.*(Los Angeles County Superior Court Case No. BC 466028 (the "**Nous Litigation**"). Israilovici Decl. ¶ 42. There, the records remained until Sherwood Partners recently took possession of the storage units as part of the chapter 11 bankruptcy case.

III. THE URGENCY THAT THE DEBTORS REPRESENTED IS FICTITIOUS

Debtors' rely almost exclusively on Juul for their factual support for the extraordinary relief that they were able to persuade the Court to grant. As however is observed from the above

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recitation, Juul is a severely disgruntled former employee who had become accustomed to a Hollywood lifestyle financed by the Cecchi Gori companies. Even if there is doubt as to the merits of the allegations and cross allegations between Juul and the Defendants, it is without argument that at a minimum, Juul is in the midst of a heated battle with the Defendants. The allegations that Juul makes are at best self-serving, and must therefore be critically examined.

Apart from his litigation bias identified above, Juul, individually and through his wholly owned company Nofatego, purports to be the *largest* non-contingent creditor of the CG Companies' bankruptcy estates. Debtors' schedule D filed on February 13, 2017 [CGUSA Docket No. 20: CG Pictures Docket No. 64] discloses Juul as holding a claim of $1,300,000 purportedly secured by a UCC-1 filing[3] on substantially all assets of the Debtors. Excluding the FINMAVI contingent liquidation claims[4] the remaining *combined* secured and unsecured claims, which are identical between the two Debtors, amount to only $566,446.57.

The Debtors also employed Juul as a "consultant" to aid in the liquidation of Debtors' assets even though Juul's purported secured claim more than doubles the combined remaining non-contingent claims. The United State Trustee ("UST") aptly addressed the tenuous basis for Juul's employment in their opposition to the Juul Employment Application filed December 22, 2016 [Docket No. 27] ("UST Opposition to Juul Employment"):

> [T]he Consultant Application fails to provide appropriate disclosure concerning the pre-petition nature of the claims Mr. Juul's company has against either or both Debtors; in fact, disclosure was virtually non-existent because it was not presented in the Consultant Application or supporting Declarations, but rather it was hidden at the end of a paragraph is able make appropriate decisions with respect to the Debtors' bankruptcy case or able to fulfill the Debtors' fiduciary obligations to *all* of its creditors. If the Debtors are permitted to "assume" this "agreement" with Mr. Juul, an insurmountable conflict of interest would arise between Mr. Juul's personal pecuniary interests and those of the other unsecured creditors. in the Terms Sheet. This conflict of interest raises grave concerns about whether these Debtors' current management.

UST Opposition to Juul Employment 13:21-14:6. At this point, Defendants do not wish to re-litigate the Juul Employment Application[5] other than to say that the incomplete disclosures and skirting of statutory requirements required to employ Juul calls into question any fact upon which Juul is the only source.

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[3] As discussed below, there is no basis for this UCC-1 in any agreement.
[4] CG Pictures' Schedule F discloses a $1,196,554.54 contingent FINMAVI judgment claim; and CGUSA's Schedule F discloses a $22,824,296.29 contingent FINMAVI judgment claim.
[5] Defendants do reserve all rights with respect to the Juul Employment Application, including, but not limited to, any relief under Rule 60 of the Federal Rules of Bankruptcy Procedure.

Given Juul's position as a creditor, former employee of the Debtors, and at battle with his prior benefactors who are now defendants in this suit, it comes as no surprise that Debtors sought their initial relief without *any* notice to the Defendants.

The Debtors, relying on Juul, assert in their pleadings that "... the Initial Transfer of Assets [the transfer to Israilovici] was done without the knowledge of Juul who was serving pursuant to an exclusive producer agreement…" *See* Complaint ¶ 61 [Docket 1]. Likewise the Debtors in their Memorandum of Points and Authorities in Support of Plaintiffs Ex Parte Application for Temporary Restraining Order [Docket 4] ("**Plaintiffs' Memorandum**") stated: "Unbeknownst to Juul, on April 1, 2015 the Assets were transferred to Israilovici by Gori, and then unbeknownst to Juul, those Assets were immediately further transferred to G&G." Memorandum, pg. 12, lns. 24-27. The Debtors go on to state: "The Debtors have recently learned that G&G has purported to transfer the Assets to third parties. On a recent trip to Mexico, Mr. Juul met with an executive of a production and film financing company, who went on to indicate to Mr. Juul that his company recently acquired certain of the Debtors titles from G&G..." Plaintiffs' Memorandum, pg. 13, lns. 12-16. *See also* Juul Declaration ¶¶ 22, and 24: "Not until recently, and specifically after the Debtors filed bankruptcy, did I learn that the Assets were transferred as described in the Debtor's complaint…"

All of this is however entirely contradicted by the facts. Indeed, Juul was well aware of the transfer of the assets from the CG Companies to Israilovici, and then from Israilovici to G&G, shortly after it occurred in April 2015. Indeed, shortly thereafter, when G&G was forced to unwind the Mann Agreement that Juul had signed without authorization, and to re-negotiate an agreement with Mann for the *Ferrari* project, Juul began his campaign of trying to preserve the money and producer credit he had self-servingly written into the Mann Agreement. In a letter dated October 2, 2015 Juul's attorneys, Robins Kaplan, wrote to counsel for G&G claiming that G&G wrongfully terminated the 2012 EP Agreement and improperly deprived Juul of his producer rights under the *Ferrari* project (even though the 2012 EP Agreement only awarded Juul

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executive producer rights). The letter, a copy of which is attached to the Lederer Decl. as Exhibit 1, states:

> In furtherance of this scheme, the CG Entities purported to transfer, for no consideration, all of the assets of the CG Entities, including, but not limited to, the rights to *Ferrari*, to G & G Productions, which is owned and controlled by Israilovici and Nappi, Gori's lifelong friends and confidants. … Now, in yet another attempt to divert assets beyond the reach of creditors and avoid the obligations owed to NFE, G & G Productions is apparently negotiating with another party to sell the purported assets of G & G Productions, including *Ferrari*, to Fabrica de Cine.

On October 5, 2015, David Lederer acting on behalf of the CG Companies responded to the Robins Kaplan letter. Lederer Decl. ¶ 3, Exhibit 2. Again on December 21, 2015 Juul though his counsel, also wrote a letter to Mann's attorney, Harold Brown, Esq. (Lederer Decl. ¶ 4, Exhibit 3) and another letter to Fabrica de Cine dated March 21, 2016 (Lederer Decl. ¶ 5, Exhibit 4) stating the same complaints.

Nor can the Plaintiffs claim that the two court appointed liquidators of Nous were without knowledge. Indeed, no declarations at all are even offered at all by these liquidators. However apparently without any level of diligence the representatives of the Nous liquidators accepted Juul's self-serving statements.

IV. THE FACTS DO NOT SUPPORT A PRELIMINARY INJUNCTION

A. Fewer Assets Are At Issue Than Plaintiffs Assert

Although the Complaint and the TRO motion asserts that G&G owns the 33 scripts, Juul is well aware the CG Companies had chain of title issues regarding many of these scripts prior to the April 2015 transfer. In 2015, Juul provided G&G's counsel, Berlandi Nussbaum & Reitzas LLP, ("BNR") all chain-of-title documents (the "COT Report"). Berlandi Decl. ¶ 6, Exhibit 1. Juul himself obtained this COT Report in order to better understand which projects he was able to market and which projects were unmarketable due to chain of title issues—as, a production company will not enter into a contract with a script rights owner unless the chain of title is clear showing ownership in the script rights owner. Israilovici Decl. ¶ 53. According to the COT Report, fifteen titles thought to be owned by the CG Companies were, in fact, no longer owned by the CG Companies and could not be marketed. Berlandi Decl. ¶ 6. There were serious chain-of-

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title issues regarding another fifteen titles that may or may not have been owned by the CG Companies. In any event, chain-of-title would need to be cleared on those fifteen titles before any agreement was entered into. The COT Report identified only twelve titles with clear chain-of-title, which transferred to G&G through the April 2015 transfer. Berlandi Decl. ¶ 6.

In addition to the 33 scripts listed in the Complaint, Plaintiffs also assert that the transferred assets consist of certain additional "film rights" including *House of Cards, Man Trouble* and *Folks!*. See also Plaintiffs' Memorandum, pg. 11, lns. 1-4. Yet the Juul Declaration references Exhibit A to the Contribution Agreement as the list of assets transferred to the Defendants, and that list does not include the so- called "film rights". *See* Juul Declaration ¶ 26; also Exhibit A to Complaint; *see also* Berlandi Decl. ¶ 13 (verifying that the CG Companies no longer held any rights to such projects, as they were produced decades ago).

B. Insufficient Valuation Is Fatal To Plaintiff's Motion

Central to the Plaintiffs claim for preliminary injunction is the assertion that Defendants received a fraudulent transfer. One key issue for the Plaintiffs to prove is that the value of the assets transferred to Defendants exceeded what was paid. Plaintiffs fail to do this.

1. The Debtors' Evidence is Subject to Evidentiary Objections

Shortly after the chapter 11 bankruptcy cases were filed, Mr. De Camara's declaration admitted that no appropriate valuation of the Debtors' assets had been performed. *See* Declaration of Andrew De Camara in Support of the Bankruptcy Filing and Early Case Administration Applications [Docket 6] ("De Camara Case Commencement Declaration") ¶ 27 ("While an investigation and appropriate valuation have not been performed…"). In addition, as recently as February 13, 2017 in the General Notes accompanying Debtors' Schedules of Assets and Liabilities [CGUSA Docket No. 20: CG Pictures Docket No. 64], Debtors admit that limited information has been available; electronic data and records are missing; and Debtors only recently obtained possession of approximately 300 boxes of documents stored in Los Angeles (which, in fact, were turned over by Juul in mid-2016 as detailed above).

Plaintiffs' only evidence offered to support the Plaintiffs' purported value of the scripts is a declaration from Juul. Not only is Juul's credibility in question but much of his declaration is

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patently inadmissible. As more fully addressed in the Juul Evidentiary Objections, Juul's purported script values lack any evidentiary foundation, constitute an improper summary, constitute hearsay, and are improper speculative lay opinions. *See* Juul Evidentiary Objections.

Apart from the evidentiary defects, the substance of Juul's declaration—even if admissible—cannot form the basis of the findings required by the Court to support the extraordinary relief of a preliminary injunction. Plaintiffs' entire argument that scripts having a value of $9,824,611.93 were transferred to Defendants relies on two different summary spreadsheets Juul attached to his declaration as Exhibit A.

These two different spreadsheets are of unknown and unexplained source and are patently deficient. The first spreadsheet of Exhibit A entitled "Development Costs" purports to show costs as of January 23, 2012 (three years before the 2015 transfer). The second spreadsheet of Exhibit A entitled "Cecchi Gori Pictures Project Costs" purports to show costs as of December 31, 1999 (some sixteen years before the transfer). This exhibit categorizes only two expense types for each script: the first spreadsheet identifies "Writer Expenses" and "Other Expenses"; and the second spreadsheet identifies "Costs from PentAmerica" and "CGP Expenditures." Juul provides no explanation as to: (a) the source of these numbers; (b) what these expenses categories consist of; and (c) who prepared the spreadsheets or when they were prepared. Without laying the proper foundation, these spreadsheets constitute nothing more than numbers on a piece of paper.

2. The Debtors Evidence in Inconsistent with Valuation Methodologies

Juul's ascription of costs to value the scripts is incorrect in light of established valuation methodology and the realities of the entertainment industry. As detailed in the Expert Opinion of Scott Weingust ("**Weingust**") attached to the Weingust Decl. as Exhibit 1 (the "**Expert Opinion**"), simply saying that the scripts cost a certain amount, has little relevance to their current value. The Expert Opinion is wholly consistent with the realities of the production cycle of a film's production. In the entertainment industry, the rights owner of a script makes various investments into the script, such as payments to the scriptwriter for services and option rights, paying in-house producers to work on the script, and paying attorneys to work out such arrangements. Even though substantial sums are often spent on any given script, the

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overwhelming majority of scripts never make it to the next step of being optioned to a movie producer or studio. In the rare cases that the movie producer does not allow the option to expire and is able to arrange production financing and make all other arrangements, *only then* is the script rights owner (i.e. the CG Companies) customarily reimbursed such costs. Compensation beyond expense reimbursement is an ever rarer occurrence and may come in the form of a "net proceeds" sharing or "backend payments," meaning a portion of movie theater revenue after full repayment of production financing and other production costs. Essentially, every owner of the rights to a script is gambling on the unlikely event that the script navigates this complicated process, and until at least obtaining full production financing, the sunken costs into a script are merely an investment the script rights owner has made at its own risk, and has no relation to the actual value of the project. Israilovici Decl. ¶ 50.

One good example is the *Silence* project. The CG Companies began investing into the *Silence* project in 1998, when the rights to the book were purchased and entered into an agreement with renowned director Martin Scorsese ("Scorsese"), granting Scorsese the exclusive rights to produce the movie. Because of delays due to the Nunnari Litigation and his own director schedule, Scorsese did not move forward on *Silence* for a number of years. Israilovici Decl. ¶ 51. Finally in 2014 after settlement of the Nunnari Litigation, Scorsese obtained production financing and the CG Companies were finally reimbursed project costs of approximately $917,000. Israilovici Decl. ¶ 51. The movie *Silence* was finally released in the United States in January 2017. The movie has not (yet) proved successful, and box office sales have equaled less than half of the approximately $40 million budget. It took sixteen years for the CG Companies to be reimbursed its costs related to this script, and it appears dubious that there will ever be a profit. Israilovici Decl. ¶ 51.

In summary, seeking to assert that any sunken cost into a script equals value is entirely inconsistent with the general structure of the entertainment market based on anyone with experience in the industry and the knowledgeable opinion of valuation experts.

3. The Nunnari Settlement Payment Must Be Excluded

Plaintiffs include a $4.45 million litigation settlement with Nunnari obtained in 2012 in an

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apparent attempt to artificially inflate the Plaintiffs' purported damages. Plaintiffs acknowledge that the settlement occurred in November of 2012 and they attach a copy of the settlement agreement dated November 15, 2012 entered into between Nunnari and Debtor to the Juul Declaration as Exhibit C (**Nunnari Settlement Agreement**"). The Nunnari Settlement Agreement was executed by Juul on behalf of the CG Companies. Then, with no evidentiary support whatsoever—not even from Juul—Plaintiff makes the illogical allegation that "[t]he [*2012* settlement] payment was not received by the Debtors due to the *April 1, 2015* transfer." (emphasis added). Attachment Motion 9:24-26. A proper recitation of the facts relating to the settlement with Nunnari demonstrates that the settlement must, as a matter of law, be eliminated from the equation.

Under the terms of Nunnari Settlement Agreement $5,450,000 was to be paid on before November 2014 (the "**Nunnari Settlement Payment**") to the CG Companies, in full satisfaction of the Nunnari Judgment. The proceeds from the Nunnari Settlement Payment were then disbursed at the direction of Juul, as the CEO, CFO and Secretary of the CG Companies at the time and the authorized signatory on the CG Companies' accounts. None of the proceeds were received by Israilovici, or certainly by G&G which did not even exist at the time. Israilovici Del. ¶ 16. Juul received between $580,000-$745,000 out of the proceeds of the Nunnari settlement. Israilovici Del. ¶ 16.

Moreover, the date of Juul's transfer of the funds falls well outside the two-year statute of limitations set forth under section 548(a)(1) of the Bankruptcy Code applicable to Plaintiff's fraudulent transfer claims, which are specifically asserted under sections 548(a)(1)(A) and 548(a)(1)(B) of the Bankruptcy Code. Accordingly, the Nunnari Settlement Payment must be excluded from the Complaint.

C. The Defendants Have a Cross Claim Against The Debtors.

Juul, referred to as a so-called "brand expert" in the Juul Employment Application, boasts in the Juul Declaration that the "Debtors' brand is an Oscar-winning brand of unique value." Juul Decl. ¶ 37. The Debtors asserts that "…interested parties may be interested in a transaction…

This interest is driven in part by the appeal of the Debtors' brand- an Oscar winning brand of unique value." Plaintiffs' Memorandum p. 19. Ln 1-2

As recently as January 6, 2016, despite Cecchi Gori firing Juul on May 4, 2015 and cutting all ties with him, Juul publicly touts the Cecchi Gori's name, including to Variety Magazine at the premiere of the Movie *Silence* Israilovici Decl. ¶ 44, Exhibit 16. This activity of Juul constitutes an actionable unauthorized use of Cecchi Gori's name and brand.

On February 1, 2014, Cecchi Gori and Israilovici entered into a Name and Likeness Licensing Agreement ("Likeness Agreement"), under which Cecchi Gori granted Israilovici an exclusive rights license over the Cecchi Gori name and likeness. Israilovici Dec. ¶ 34, Exhibit 10. Upon transfer of the license to Israilovici, Cecchi Gori made repeated demands to Juul to cease public use of his name and brand. Israilovici Dec. ¶ 37, Exhibit 12. See also Exhibit A to the Juul Declaration which is a May 5, 2015 email from Cecchi Gori to Juul stating "I remember once again that you are no longer authorized to use my name or that of my company, for any reason."

California has long recognized a common law right of privacy for the protection of a person's name and likeness against appropriation by others for their commercial gain. *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1000 (9th Cir. 2001); *Lugosi v. Universal Pictures* (1979) 25 Cal.3d 813, 819] The elements necessary to establish the common law cause of action are: (1) the defendant's use of the plaintiff's identity; (2) the appropriations of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. *Downing at 1000; Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 417; *Hilton v. Hallmark*, 599 F. 3d 894 (9th Cir. 2010)

V. PLAINTIFFS FAILED TO MAKE A SUFFICIENT LEGAL SHOWING TO WARRANT GRANTING OF A PRELIMINARY INJUNCTION

A. A Preliminary Injunction Is Extraordinary Remedy

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 128 S.Ct. 2207, 2219, 171 L.Ed.2d 1 (2008); *Timbisha Shoshone Tribe v. Salazar*, 697 F. Supp. 2d 1181, 1186 (E.D. Cal. 2010). As such, the Court may only grant such relief "upon a

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clear showing that the plaintiff is entitled to such relief." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 375, 172 L.Ed.2d 249 (2008) (emphasis added). It is the Plaintiffs' high burden to clearly show both a *likelihood* of success on the merits and a *likelihood* of irreparable harm if the extraordinary relief is not granted. *Id.*[6]

B. Plaintiffs Request an Extraordinary Remedy Without Having Proper Service

As articulated by counsel at the February 1, 2017 hearing, plaintiffs admittedly sought the TRO without providing any notice to Defendants in an effort to obtain the "element of surprise." *See* Audio of 2/1/17 Hearing [AP Docket No. 16]. Defendants acknowledge that a TRO may be issued without notice under Rule 65(b)(1) Federal Rules of Civil Procedure, such is not the case for a preliminary injunction. The TRO entered by the Court provided that Plaintiff serve all pleadings and papers in connection with the hearing on the Order to Show Cause on the Defendants and the United Sates Trustee's representative by personal service, overnight mail, email or facsimile." TRO 3:7-10. Plaintiffs' Certificate of Service filed February 6, 2017 [Docket No. 21] indicates that Plaintiffs served three of the Defendants only by email to the following email addresses: Cecchi Gori-vcecchigori@gmail.com, Israilovici-gabriele1972@me.com, and Nappi-avvgiovanninappi@gmail.com. Plaintiffs have filed no further certificates of service indicating that any of the three individual defendants have been properly served in accordance with Rule 4 of the Federal Rules of Civil Procedure.

A federal court may issue an injunction only "if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the rights of persons not before the court." *Zepeda v. United States Immigration Service*, 753 F.2d 719, 727 (9th Cir. 1985). "A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R. Civ. P. 4." *Benny v. Pipes*, 799 F.2d 489,

[6] In the Ninth Circuit, the likelihood of success on the merits and likelihood of irreparable harm represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. They are not separate tests but rather outer reaches of a single continuum." *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1093 (9th Cir. 2007), quoting *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir.2005). The sliding scale holds little relevance here, as Plaintiffs have failed to make any showing on any point on the scale.

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492 (9th Cir. 1986) (actual notice is insufficient to confer personal jurisdiction over a defendant if service does not substantially comply with Rule 4, Fed. R. Civ. P.).

For this and the other reasons set out in the Motion to Quash[7] , it would be improper to at this time to issue any preliminary injunction to the individual defendants until properly served.

C. The "Likelihood of Reorganization Standard" Standard is Inapplicable

The TRO Motion argues that, under *Excel Innovations*, that the test for "success on the merits" is a reasonable likelihood of success in reorganizing if the requested relief is granted." Motion 18:8-22. This is a misapplication of the law.

Although in *Excel Innovations* the Ninth Circuit introduced a lighter "likelihood of reorganization" standard to the preliminary injunction equation. 502 F. 3d 1086 (9th Cir. 2007), the Ninth Circuit explicitly held that this standard only applies in one specific scenario—when the debtor seeks to stay an action *in which the debtor is not a party*. *Id.* at 1095. In *Excel Innovations*, the debtor sought and obtained a preliminary injunction to stay an arbitration proceeding between to non-debtor parties. The holding of *Excel Innovations* clarified what must be shown under the "likelihood of success" prong, when the pending action does not involve the debtor—reasoning that there is no "future proceeding" wherein the debtor may be likely to succeed. Accordingly, a reasonable "likelihood of a successful reorganization" is utilized in lieu of the traditional first prong. *Id.* at 1095-96.

The instant adversary proceeding is not the type of action contemplated in *Excel Innovations*. Plaintiffs are not seeking to stay a pending action between two non-debtor third parties. Rather, Plaintiffs have affirmatively initiated this action against Defendants and the request for injunctive relief does not extend beyond the named Defendants. There is a clear "future proceeding" which Plaintiffs must show a likelihood of success in—that is, the instant adversary proceeding. The "likelihood of a successful reorganization" is inapplicable and Plaintiffs' attempt to utilize this lower burden is clearly erroneous.

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[7] As more fully discussed in the Motion to Quash, Israilovici and Nappi as citizens and residents of Italy create additional hurdles for proper service under Rule 4, as email service is improper under the Hague Convention rules, as applicable to Italian residents.

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D. Plaintiff Has Failed to Demonstrate a Likelihood of Success on the Merits

1. Plaintiff's Evidence is Inconsistent and Largely Inadmissible

As more thoroughly addressed above, Plaintiffs have failed to properly make a showing of the value of the thirty-three scripts contained in the Complaint—of which only twelve were transferred with clear title. The inconsistent and outdated spreadsheets attached to the Juul Declaration are inadmissible, factually lack foundation and do not reflect the reality of the market, according to valuation experts and those familiar with the industry.

The fraudulent transfer claims alleged in the Complaint wholly rely upon the allegation that less than equivalent value was received in the April 2015 transfer[8] yet Plaintiffs have left the Court with no admissible or reliable evidence to make any finding of the value of the assets transferred. On this basis alone, Plaintiffs have failed to carry their burden to show any likelihood of success on the merits to warrant such extraordinary relief.

2. A Fair Exchange of Value Occurred

Plaintiffs' TRO Motion simply concludes that there was no consideration given for the transfer of assets. However, as detailed in the Israilovici Declaration, there was, in fact, more than sufficient consideration given. From 2009 to 2011, while Cecchi Gori's assets were tied up in the FINMAVI bankruptcy, Cecchi Gori was simultaneously fighting protracted litigation against Nunnari, which ultimately led to a one-month trial in the middle of 2010. Israilovici Decl. ¶ 4 to ¶14. Therefore, Cecchi Gori turned to Israilovici for financial support and borrowed substantial sums of money at different times, as follows: $50,000.00 on or about November 9, 2009; $230,000 on or about February 19, 2010; $210,000 on or about July 14, 2010; $125,000.00 on or about October 18, 2010; $275,000 on or about December 2, 2010; $325,000 on or about March 23, 2011, $75,000 on or about April 19, 2011; $115,000 on or about June 16, 2011; and $85,000 on or about October 3, 2011. Israilovici Decl. ¶ 14.

Simultaneously, Israilovici was spending considerable amounts of time providing services under the Consultant Agreement having flown to Los Angeles many times since July of 2009, and had yet to receive any compensation from Cecchi Gori. Israilovici's concern about with Cecchi Gori's nonpayment came to a tipping point in November of 2012 when Israilovici did not receive any portion of the Nunnari Settlement Payment. Israilovici Decl. ¶ 16 to ¶17. Therefore, Israilovici requested that Cecchi Gori memorialize the $1,500,000 of aggregate debt in a promissory note, which was executed on November 20, 2012 (the "**2012 Note**") and which called for payment in full by January 15, 2015. The 2012 Note further pledged as security scripts, contracts and brands owned by the CG Companies. A copy of the 2012 Note is attached to the Israilovici Decl. as Exhibit 3.

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[8] As to actual fraud, Plaintiffs assert no consideration as a badge of fraud (Complaint ¶ 92), and as to constructive fraud Plaintiffs assert less than equivalent value as a necessary element (Complaint ¶ 98).

After signing the 2012 Note, Cecchi Gori and Israilovici talked about the proper amount of compensation for services performed under the Consultant Agreement. Since the Consultant Agreement contemplated that any compensation to Israilovici would be paid by Cecchi Gori personally, the parties agreed that Cecchi Gori would pay Israilovici a flat rate $1,000,000 for services performed under the Consultant Agreement for the period July 1, 2009 to December 31, 2014. Israilovici Decl. ¶ 18. On November 29, 2012, Israilovici and Cecchi Gori entered into a Private Agreement dated November 29, 2012 (the "2012 Agreement"). A copy of the 2012 Agreement is attached to the Israilovici Decl. as Exhibit 4. Under the Private Agreement the $1,000,000 consulting fees due under the Consultant Agreement would be due and payable on December 31, 2014. If all amounts owed were not paid by January 15, 2015, then certain assets owned by the CG Companies would be automatically transferred to Israilovici. Israilovici Decl., Exhibit 4 .

This arrangement was the only way Israilovici felt at least a portion of the debt owed would be paid. Israilovici Decl. ¶ 19. Israilovici knew that the assets had no value unless and until a film studio elected to purchase the rights to them (or any one of them) in order to make a film. Israilovici Decl. ¶ 19. Israilovici knew the chance of this happening was extremely remote, with the exception of just a few of the assets, but they still remained Israilovici's best chance to be repaid the monies owed. ¶ 19.

On their face, the 2012 Note and the 2012 Agreement show a debt of at least $2,500,000

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which was paid "in kind" by the April 2015 transfer. *See* Israilovici Decl. as Exhibits 3 and 4. It is well established that, in considering whether there is a fair exchange for value, "value" includes payment of a preexisting debt owed by the debtor. *Matter of Fitness Holdings Int'l, Inc.* 714 F3d 1141, 1145-1146 (9th Cir. 2013). The April 2015 transfer was in payment of the preexisting debt owed to Israilovici and therefore constitutes a fair exchange for value.

3. The 2013 TRO Has No Applicability to the April 2015 Transfer

In alleging a fraudulent transfer based on actual fraud, Plaintiffs rely heavily on the Temporary Restraining Order issued on January 11, 2013 ("2013 TRO") by the state court in the Nous Litigation. The reliance on the 2013 TRO is misplaced.

As more fully discussed in the Motion to Quash[9] the 2013 TRO: (a) by its own terms did not enjoin the Debtors; and (b) expired by operation of law on March 13, 2013 when the state court vacated its OSC re: preliminary injunction.

What's more, Plaintiffs appear to be selectively applying this "purely transitory" order—arguing on the one hand that the temporary order remained in effect, *ad infinitum*, but then conspicuously failing to mention the order when discussing the June 26, 2014 Mann Agreement[10] or the August 9, 2013 *Silence* agreement[11], both of which were executed by Juul and both of which ostensibly transferred assets of the Debtors. Israilovici Decl. Exhibits 7 and 17. Plaintiffs cannot assert that the 2013 TRO only applies to deals from which Juul feels he was cut out. Rather, the fact of the matter is that the TRO expired by operation of law on March 13, 2013 and held no force or effect thereafter in relation to the any of the stated agreements or the April 2015 transfer of assets.

4. Plaintiff Has Failed to Show that Israilovici is an Insider

Plaintiffs implicitly acknowledge that Israilovici was not a statutory "insider" of the Debtors, but asserts that he is a "non-statutory" insider. "A creditor is not a non-statutory insider unless: (1) the closeness of its relationship with the debtor is comparable to that of the

[9] The concurrently filed Motion to Quash has been properly incorporated by reference hereto pursuant to Rule 10 of the Federal Rules of Civil Procedure (Fed. R. Bankr. Proc. Rule 7013).
[10] Complaint ¶ 64.
[11] Complaint ¶ 67.

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enumerated insider classifications in § 101(31), and (2) the relevant transaction is negotiated at less than arm's length." *In re The Vill. at Lakeridge, LLC*, 814 F.3d 993, 1001 (9th Cir. 2016). "A court cannot assign non-statutory insider status to a creditor simply because it finds the creditor and debtor share a close relationship." *Id.* After quoting the proper authority, Plaintiff concludes without any argument, that Israilovici "fits within the category of [non-]statutory [sic] insider" Motion 20:14-15. Plaintiff however offers very little evidence to assist the Court in the "fact-intensive analysis" to find Israilovici a non-statutory insider.

Israilovici was, and still is, a trusted friend of Cecchi Gori. Cecchi Gori approached Israilovici in 2009, at a time when Cecchi Gori's assets were tied up in the FINMAVI bankruptcy and contentious litigation was ongoing with Nunnari. Israilovici lent Cecchi Gori substantial sums of money and worked with the Debtors as a liaison, per the terms of the Israilovici Consulting Agreement. In this capacity, Israilovici accumulated unpaid compensation payable directly by Cecchi Gori. The response to this chain of events was Israilovici's uneasiness and the seeking of further assurances of payment through the 2012 Note and the 2012 Agreement—especially after no part of the Nunnari Settlement Payment was disbursed to Israilovici. There is nothing in the record that suggests these agreements were not arm's length transactions.

5. Plaintiffs Fail to Show Any Other Asserted Badges of Fraud

Plaintiffs assert a likelihood of success on the actual fraud claim based on "several" badges of fraud, but only addresses four: an insider relationship; lack of consideration; concealment from creditors; and failure to follow corporate formalities. As detailed above, Defendants have demonstrated that both fair exchange of value took place and there was no insider relationship. Plaintiffs also present no evidence that the transfer was concealed from creditors. Clearly Juul knew about it either at the time or shortly thereafter as is evidenced by his counsel's several letters attached to the Lederer declaration. Similarly, there is no evidence that Cecchi Gori concealed the transfer from any creditors. Indeed, at this point, even Debtors are unaware exactly whom the creditors of the estate are. *See* General Notes [CGUSA Docket No. 20: CG Pictures Docket No. 64].

As far as corporate formalities, Plaintiffs here too have presented no evidence that corporate formalities were not followed. Indeed Plaintiffs concede that they have limited access to records. See CG Pictures Docket No. 64 where the Debtors admit that limited information has been available. Without further evidence showing specific corporate formalities disregarded, Plaintiffs fail to make a *prima facie* showing.

6. Plaintiff Has Failed to Demonstrate Irreparable Harm

This is an action on a money claim. Nous, the purported owner of the Debtor, is a company in liquidation, currently managed by two court appointed liquidators, Davide Franco and Sergio Torri. Motion 5:27-6:1. "The liquidators have since proceeded to liquidate assets of Nous in an effort to repay debts owed to its creditors, including FINMAVI." Motion 6:1-2. Thus, the single task of Nous in this chapter 11 is to liquidate the assets of the Debtors. As Debtors stated in the Motion, "[i]t is undisputable that the Debtors filed these cases to recover and monetize their assets for the benefit of all stakeholders." Motion 18:17-18. Plaintiffs are not seeking to recover the transferred assets and market them as part of a going concern. Rather, Plaintiffs' admitted purpose of this action—and the entire chapter 11 bankruptcy—is to maximize the monetary recovery for Debtors' purported assets.

"Under *Winter*, plaintiffs must establish that irreparable harm is *likely*, not just possible, in order to obtain a preliminary injunction." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (emphasis added). Further, it is well settled that "[e]conomic injury alone does not support a finding of irreparable harm, because such injury can be remedied by a damage award." *In re Irwin*, 338 B.R. 839, 854 (E.D. Cal. 2006), quoting *Rent–A–Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991). "Mere financial injury . . . will not constitute irreparable harm if adequate compensatory relief will be available in the course of litigation." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 471 (9th Cir. 1984) (affirming trial court's decision not to enjoin the loss of a commercial leasehold).

Plaintiffs argue that the scripts are "unique" and may be lost to a "good faith purchaser." This argument is unpersuasive. Even assuming that G&G were able to sell any of these scripts outright to a good faith purchaser, the sale would merely accomplish Plaintiffs' ultimate goal—to monetize the assets. There has been no showing whatsoever that if Plaintiffs ultimately prevail at

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trial on the fraudulent transfer claims, that the Defendants could not pay any judgment obtained.

Furthermore, as illustrated in the declarations of Israilovici and Brian Berlandi, the process of "selling" a script is hardly a straight forward process, and typically involves years of negotiations. Generally, a script rights owner sells the rights to the project, for payment—consisting only of expense reimbursement—due only when production financing is obtained. Israilovici Decl. ¶ 50. Then, the company would typically have to wait many years for the movie to be filmed and released for possibility of any "backend" payments[12]—meaning revenue entitlements after all production financing and other costs are paid in full. Israilovici Decl. ¶ 50. If the Debtor intends to employ Juul to perform this complicated task—in spite of Juul's conflicts—this begs the question as to how many years the Debtors will wait for Juul to monetize the projects.

7. The Balance of Equities Weigh In Defendants' Favor

If a preliminary injunction was available to every plaintiff that was concerned about whether or not they might be able to collect a judgment, courts would routinely be issuing preliminary injunctions. Such of course is not the case. This type of relief is often available in the form of a writ of attachment. However as shown in the accompanying Motion to Quash, Plaintiffs have utterly failed to even make an adequate showing of an entitlement to a writ. It would not be highly equitable to give to the Plaintiffs such a drastic remedy of a preliminary injunction on a claim in which damages suffice, particularly when Plaintiffs fall so far short of being entitled to a writ of attachment.

On the other hand the harm to Defendants, if injunctive relief is granted, is immediate and severe . The issuance of the Court's Temporary Restraining Order on February 1, 2017 has severely disrupted G&G's business and a continued injunction would be catastrophic. Israilovici Decl. ¶ 55. As Juul is well aware, reputation in the entertainment industry is vital to success. Juul, a disgruntled former employee of the CG Companies, makes scandalous allegations against Israilovici and Nappi, and the court issued an injunctive order without any notice to Israilovici or

[12] Meaning the above discussed revenue entitlements after all production financing and other costs are paid in full.

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Nappi whatsoever based on the one-sided account of Juul's self-serving claims. The injunction obtained has an very negative impact not only the assets transferred from the CG Companies, but also on the ability for G&G to enter into any agreements or generally to conduct business—as producers will likely shy away from G&G if the injunction remains in place. Israilovici Decl. ¶ 16. Furthermore, the attachment order has frozen the G&G bank accounts, from which numerous reoccurring expenses were yet to be posted. Israilovici Decl. ¶ 57. A preliminary injunction could potentially collapse G&G's entire business. Israilovici Decl. ¶ 57. The balances of equities unquestionably weigh in Defendants' favor

8. Public Policy Favors Denial of the Extraordinary Relief

At the hearing on the TRO motion, the Court acknowledged that a "public policy" finding is rare when issuing a temporary restraining order. *See* Audio of 2/1/17 Hearing [AP Docket No. 16]. Nevertheless, the Court found the alleged violation of the 2013 TRO supported such a finding. Plaintiffs acknowledged the limited information available to the Court at the time the finding was made. The Defendants have now provided a clear recitation of the facts to show not only did the TRO expire as a matter of law, but the Plaintiffs' primary witness has an apparent history of exerting unauthorized control over, and misappropriation of, the Debtors' assets. It is in the interest of public policy to dissuade, rather than reward, such behavior.

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Court Service List

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